JOHN BOYD PARSONS

IBLA 76-70 Decided November 10, 1975

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring mining claims null and void. A 9105.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Lands -- Withdrawals and Reservations: Generally

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

APPEARANCES: John Boyd Parsons, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John Boyd Parsons appeals from the June 30, 1975, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring six lode mining claims null and void ab initio. The claims are situated in sections 4 and 5, T. 1 N., sections 32 and 33, T. 2 N., R. 17 W., GSR Mer., Yuma County, Arizona. The claims were declared null and void because they were located on land not open to entry at the time of their location. All of the claims are located within the boundaries of the Kofa Game Refuge. An application for withdrawal of all land in the refuge from the further operation of the mining and mineral leasing laws was filed and noted on the land office records on February 21, 1974.

[1] The pertinent regulation, 43 CFR 2091.2-5, provides, in part, that:

(a) Application. The noting of the receipt of the application under §§ 2351.1 to 2351.6 in the tract books or on the official plats maintained in the proper

> office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. * * *.

It is clear that the lands in question were segregated from entry on February 21, 1974, and that when appellant located his claims on December 25, 1974, and subsequently, he did so on land closed to mining entry. It is axiomatic that mining claims located on land closed to mineral entry are null and void ab initio. Russ Journigan, 16 IBLA 79 (1974); United States v. Anderson, 15 IBLA 123 (1974) Kelly B. Hall, 4 IBLA 329 (1972); Albert Gardini, A-30958 (October 16, 1968); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom., Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

Nevertheless, in his statement of reasons for appeal, appellant states that in justice and fairness he should be allowed to retain his mining claims as 1) he entered the mining claims in good faith; 2) the area is not suitable for inclusion in a national wilderness system; and 3) the United States is prevented from declaring the claims null and void by the doctrines of estoppel and laches.

We do not question appellant's good faith even though it was a matter of public record at the time these claims were located that the land in question was segregated from mineral entry. Rather, in these circumstances, good faith does not open the lands to entry.

In his argument that these lands are not suitable for inclusion in a national wilderness system, appellant states that we should be guided by the standards set forth in 16 U.S.C. § 1133(c) (1970). That statute provides that there should be no installations within an area included in the national wilderness system. Appellant points out that there are man-made installations within the area, and, consequently, the area is not suitable for inclusion in a wilderness area. However, we are not dealing here with additions to the National Wilderness Preservation System, 16 U.S.C. § 1131 et seq. (1970). The purpose of this application for withdrawal includes the creation of a wildlife refuge from an existing area known as the Kofa Game Refuge. A notice of the proposed withdrawal was published in the Federal Register on March 6, 1974, inviting comments, suggestions, or objections. 39 F.R. 8640. This Board is not the proper forum to receive and decide complaints concerning the propriety and necessity of a proposed withdrawal.

Finally, we note that estoppel and laches are not applicable in this case. Appellant does not point out any reliance on act or omission which would give rise to application of the estoppel doctrine.

See, e.g., United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970). Nor is there any lapse of time which would require application of the doctrine of laches, even assuming that the doctrine were applicable to public lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge